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No. 90-695

In The

Supreme Court of the United States

October Term, 1990

R. STUART HUFF, as Trustee,

Petitioner,

vs.

STANDARD LIFE INSURANCE COMPANY,
a Mississippi Corporation,

Respondent.

Petition For A Writ Of Certiorari
To The Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Eleventh Circuit properly decided a novel issue of Florida tort law by consulting Florida intermediate appellate court decisions, reviewing the law of sister state courts on the identical issue, and applying general principles of Florida tort law?

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

REASON THE PETITION SHOULD BE DENIED ... 1

CONCLUSION 4

TABLE OF AUTHORITIES

Page

American Triticale, Inc. v. Nytco Services, Inc., 664 F.2d 1136 (9th Cir. 1981) 2

Bernhardt v. Polygraphic Co. of America, 350 U.S. 198 (1956) 2

Calcasieu-Marine Nat. Bank v. American Employers' Ins. Co., 533 F.2d 290 (5th Cir. 1976), *cert. denied*, 429 U.S. 922 (1976) 2

Cross v. State Farm Mut. Auto. Ins. Co., 873 F.2d 75 (4th Cir. 1989) 3

Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) 1

Florida East Coast R. Co. v. Wade, 53 Fla. 620, 43 So. 775 (1907) 3

Francis v. INA Life Ins. Co., 809 F.2d 183 (2d Cir. 1987) 3

Huff v. Standard Life Ins. Co., 897 F.2d 1072 (11th Cir. 1990) 3

Maseda v. Honda Motor Co., 861 F.2d 1248 (11th Cir. 1988) 2

Metz v. United Technologies Corp., 754 F.2d 63 (2d Cir. 1985) 2

Orfield v. International Harvester Co., 535 F.2d 959 (6th Cir. 1976) 2

Tidler v. Eli Lilly & Co., 851 F.2d 418 (D.C. Cir. 1988) 3

Towne Realty, Inc. v. Safeco Ins. Co., 854 F.2d 1264 (11th Cir. 1988) 2

Weiss v. United States, 787 F.2d 518 (10th Cir. 1986) 2

REASON THE PETITION SHOULD BE DENIED

The questions presented by the petitioner do not raise issues worthy of this Court's review. They do not state reasons for this Court's exercise of judicial discretion to grant the petition even remotely within the confines of Rule 17 of the Rules of the Supreme Court of the United States.

The pivotal point raised by the petitioner is that the Court of Appeals for the Eleventh Circuit applied state law other than that of the State of Florida in ruling that the petitioner did not have an actionable claim for negligent delay against the respondent insurance company arising out of an application for life insurance. The petitioner then posits that the lower court violated the *Erie* doctrine, which respondent surmises the petitioner considers a denial of due process. *See Erie R. Co. v. Tompkins*, 304 U.S. 64 (1937). The petitioner's nebulous reasoning, and perhaps his understanding of applicable law, is simply incorrect.

The Eleventh Circuit panel correctly found that the Florida Supreme Court never has ruled on the specific issue of whether a plaintiff was required to prove that a life insurance company's negligent delay in acting upon a life insurance application was the proximate cause of damages to the plaintiff. The circuit court also correctly found that no Florida intermediate appellate court had ruled on the issue. However, the Eleventh Circuit panel did rule on the issue as the Florida Supreme Court would decide the issue, and in that process the panel considered the law of sister states, just as would the Florida high

court. In the absence of controlling Florida law, the federal appellate court assumed the vicarious role of the Florida Supreme Court in order to apply well-settled tort law to the claim presented.

A federal court ordinarily must apply the state law as pronounced by the state's highest court. *See Towne Realty, Inc. v. Safeco Ins. Co.*, 854 F.2d 1264 (11th Cir. 1988). In filling a void under state law, a federal court must predict how the state's highest court would rule. A novel question of state law may be resolved by examining policies, principles, and state court decisions in analagous areas of the state's law. *Weiss v. United States*, 787 F.2d 518 (10th Cir. 1986). In assuming this soothsayer role, the federal court may consider the state's intermediate appellate court decisions. *See American Triticale, Inc. v. Nytco Services, Inc.*, 664 F.2d 1136 (9th Cir. 1981). But intermediate state court decisions are not binding on the federal court if that court believes that the highest state court would decide the issue differently. *Maseda v. Honda Motor Co.*, 861 F.2d 1248 (11th Cir. 1988).

In the absence of a guiding light from the state's intermediate court system, the federal court may utilize all the resources which would be available to the state's highest court. *Bernhardt v. Polygraphic Co. of America*, 350 U.S. 198 (1956) (Frankfurter, J., concurring); *Orfield v. International Harvester Co.*, 535 F.2d 959 (6th Cir. 1976). Case law of other jurisdictions is one of the appropriate resource tools, particularly when the issue of a particular state's law partakes of national law. *Calcasieu-Marine Nat. Bank v. American Employers' Ins. Co.*, 533 F.2d 290 (5th Cir. 1976), *cert. denied*, 429 U.S. 922 (1976); *Metz v. United Technologies Corp.*, 754 F.2d 63 (2d Cir. 1985). Certification

to a state supreme court is also a method for a federal court to resolve an issue of state law. *E.g., Cross v. State Farm Mut. Auto. Ins. Co.*, 873 F.2d 75 (4th Cir. 1989). However, the certification decision rests in the sound discretion of the federal appellate court, and it will not be invoked where the court can resolve the issue with little uncertainty, particularly when the relevant resources provide a discernible path for the court to follow. *Tidler v. Eli Lilly & Co.*, 851 F.2d 418 (D.C. Cir. 1988). If by considering all resources that a state court could use, the issue can be resolved, the federal appellate court should decide the issue. *See Francis v. INA Life Ins. Co.*, 809 F.2d 183 (2d Cir. 1987).

In fulfilling its role as a Florida court surrogate, the Court of Appeals for the Eleventh Circuit, though consulting the law of other jurisdictions on an issue of uniform national law, i.e., life insurance, actually applied a principle of tort law long ago resolved by the Florida Supreme Court. Proximate causation is an essential element of negligence under Florida law, a point that can hardly be disputed. *See, e.g., Florida East Coast R. Co. v. Wade*, 53 Fla. 620, 43 So. 775 (1907).

There was nothing unique about this issue that required certification to the Florida Supreme Court. As the Eleventh Circuit panel properly reasoned, the determinative issue was whether it was necessary that the plaintiff incur "any damages at all" as an element of a negligence claim. *Huff v. Standard Life Ins. Co.*, 897 F.2d 1072, 1074, n.5 (11th Cir. 1990). This proposition hardly required a complicated, or even rudimentary, analysis of Florida law – or any state's law for that matter. The lower court merely applied a conventional tort principle to the

facts of the case. Therefore, the actual decision below was not based on a new pronouncement of state law, but rather, was old wine in a new bottle; the Court of Appeals for the Eleventh Circuit properly found that the facts in the record failed to establish the element of proximate causation in a negligence case.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that R. Stuart Huff's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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